

Assembly Bill No. 391

Passed the Assembly August 6, 2012

Chief Clerk of the Assembly

Passed the Senate July 2, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 21627, 21628, 21641, and 21642 of, and to add Section 21642.5 to, the Business and Professions Code, and to amend Sections 21300 and 21301 of, and to repeal and add Section 21208 of, the Financial Code, relating to personal property, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 391, Pan. Secondhand dealers and pawnbrokers: electronic reporting.

(1) Existing law generally requires secondhand dealers and coin dealers, as defined, to report specified transactions involving tangible personal property, on forms provided or approved by the Department of Justice, to the local law enforcement agency where their businesses are located. Existing law defines “tangible personal property” for these purposes, and excludes from that definition, among other items, commercial grade ingots defined to include, among other items, 0.99 fine ingots of gold, silver, or platinum.

This bill would revise the definition of commercial grade ingots to include 0.99 fine or finer ingots of gold, silver, palladium, or platinum.

Under existing law, secondhand dealers and coin dealers are required to report the information described above using an electronic reporting system 12 months after the Department of Justice develops that system.

This bill would eliminate the electronic filing requirements for coin dealers, and would instead require that secondhand dealers report this information using the single, statewide, uniform electronic reporting system on and after the date that the system is implemented, as specified.

(2) Existing law requires a local law enforcement agency to issue a license to engage in the business of a secondhand dealer or pawnbroker to an applicant who meets designated criteria. Existing law authorizes the local licensing authority and the Department of Justice to charge an initial licensure fee and a renewal fee, as specified.

This bill would require the Department of Justice to charge a licensure fee and a renewal fee of no more than \$300, as specified. The bill would also require licensees issued a license before the effective date of this bill to pay an additional fee of no more than \$288 for the purpose of funding the single, statewide, uniform electronic reporting system, with payment due within 120 days of the enactment of this bill. The bill would require that the fees assessed by the department be deposited in the Secondhand Dealer and Pawnbroker Fund, which the bill would create in the State Treasury. The bill would require that the money in the fund be used by the department, upon appropriation by the Legislature, for the purpose of paying for specified regulatory costs, including the cost of implementing, operating, and maintaining the single, statewide, uniform electronic reporting system. The bill would also require applicants for a license to submit fingerprint images relative to a required criminal background check, with associated fee revenue to be deposited in the Fingerprint Fee Account, and would make those revenues available to the Department of Justice, upon appropriation by the Legislature, for these purposes.

This bill would make findings and declarations of the Legislature, and state the intent of the Legislature, with regard to these matters. The bill would make other related conforming changes.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to enact legislation that fully funds the cost of developing and implementing a single, statewide, uniform electronic reporting system of the information required to be reported in accordance with Section 21628 of the Business and Professions Code, for reporting the acquisition of secondhand, tangible personal property through the imposition of a fee 120 days after enactment of this act and thereafter upon the application for and renewal of a license to act as a secondhand dealer or pawnbroker.

It is further the intent of the Legislature to relieve all secondhand dealers and pawnbrokers of the inherent costs and burdens imposed under existing law that requires these businesses to report their daily acquisitions of secondhand tangible personal property on

paper forms limited to a single transaction. The Legislature finds that the costs associated with printing, manually completing, and mailing or delivering hundreds to thousands of paper reports is an unnecessary and expensive burden on these businesses and represents an unnecessary risk of loss of consumer financial information, and that the cost of electronically collecting multiple transactions on a daily basis through the uniform electronic reporting system is significantly more cost effective and a benefit to these businesses.

SEC. 2. Section 21627 of the Business and Professions Code is amended to read:

21627. (a) As used in this article, “tangible personal property” includes, but is not limited to, all secondhand tangible personal property which bears a serial number or personalized initials or inscription or which, at the time it is acquired by the secondhand dealer, bears evidence of having had a serial number or personalized initials or inscription.

(b) “Tangible personal property” also includes, but is not limited to, the following:

(1) All tangible personal property, new or used, including motor vehicles, received in pledge as security for a loan by a pawnbroker.

(2) All tangible personal property that bears a serial number or personalized initials or inscription which is purchased by a secondhand dealer or a pawnbroker or which, at the time of such purchase, bears evidence of having had a serial number or personalized initials or inscription.

(3) All personal property commonly sold by secondhand dealers which statistically is found through crime reports to the Attorney General to constitute a significant class of stolen goods. A list of such personal property shall be supplied by the Attorney General to all local law enforcement agencies. Such list shall be reviewed periodically by the Attorney General to insure that it addresses current problems with stolen goods.

(c) As used in this article, “tangible personal property” does not include any new goods or merchandise purchased from a bona fide manufacturer or distributor or wholesaler of such new goods or merchandise by a secondhand dealer. For the purposes of this article, however, a secondhand dealer shall retain for one year from the date of purchase, and shall make available for inspection

by any law enforcement officer, any receipt, invoice, bill of sale or other evidence of purchase of such new goods or merchandise.

(d) As used in this article, “tangible personal property” does not include coins, monetized bullion, or commercial grade ingots of gold, silver, or other precious metals. “Commercial grade ingots” means 0.99 fine or finer ingots of gold, silver, palladium, or platinum, or 0.925 fine sterling silver art bars and medallions, provided that the ingots, art bars, and medallions are marked by the refiner or fabricator as to their assay fineness.

SEC. 3. Section 21628 of the Business and Professions Code is amended to read:

21628. Every secondhand dealer or coin dealer described in Section 21626 shall report daily, or on the first working day after receipt or purchase of secondhand tangible personal property, on forms or through an electronic reporting system approved by the Department of Justice, all secondhand tangible personal property, except for firearms, which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, to the chief of police or to the sheriff, in accordance with the provisions of Sections 21630 and 21633 and subdivision (j). The report shall be legible, prepared in English, completed where applicable, and include, but not be limited to, the following information:

(a) The name and current address of the intended seller or pledger of the property.

(b) The identification of the intended seller or pledger. The identification of the seller or pledger of the property shall be verified by the person taking the information. The verification shall be valid if the person taking the information reasonably relies on any one of the following documents, provided that the document is currently valid or has been issued within five years and contains a photograph or description, or both, of the person named on it, and, where applicable, is signed by the person, and bears a serial or other identifying number:

- (1) A passport of the United States.
- (2) A driver’s license issued by any state or Canada.
- (3) An identification card issued by any state.
- (4) An identification card issued by the United States.
- (5) A passport from any other country in addition to another item of identification bearing an address.

(6) A Matricula Consular in addition to another item of identification bearing an address.

(c) A complete and reasonably accurate description of serialized property, including, but not limited to, the following: serial number and other identifying marks or symbols, owner-applied numbers, manufacturer's named brand, and model name or number. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(d) A complete and reasonably accurate description of nonserialized property, including, but not limited to, the following: size, color, material, manufacturer's pattern name (when known), owner-applied numbers and personalized inscriptions, and other identifying marks or symbols. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(e) A certification by the intended seller or pledger that he or she is the owner of the property or has the authority of the owner to sell or pledge the property.

(f) A certification by the intended seller or pledger that to his or her knowledge and belief the information is true and complete.

(g) A legible fingerprint taken from the intended seller or pledger, as prescribed by the Department of Justice. This requirement does not apply to a coin dealer, unless required pursuant to local regulation.

(h) (1) When a secondhand dealer complies with all of the provisions of this section, he or she shall be deemed to have received from the seller or pledger adequate evidence of authority to sell or pledge the property for all purposes included in this article, and Division 8 (commencing with Section 21000) of the Financial Code.

(2) In enacting this subdivision, it is the intent of the Legislature that its provisions shall not adversely affect the implementation of, or prosecution under, any provision of the Penal Code.

(i) Any person who conducts business as a secondhand dealer at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, outside the jurisdiction that issued the secondhand dealer license in accordance with subdivision (d) of Section 21641, may be required to submit a duplicate of the transaction report prepared pursuant to this section to the local law enforcement agency where the gun show or event is conducted.

(j) (1) The Department of Justice shall, in consultation with appropriate local law enforcement agencies, develop clear and comprehensive descriptive categories denoting tangible personal property, as detailed in this section, subject to the reporting requirements of this section. These categories shall be incorporated by secondhand dealers and coin dealers described in Section 21626 for purposes of the reporting requirements set forth herein. Except as otherwise provided in this section, any report required of a secondhand dealer shall be transmitted by electronic means. With the consultation by the Department of Justice with local law enforcement agencies and representatives from the secondhand dealer businesses, pursuant to Resolution Chapter 16 of the Statutes of 2010, and upon the availability of sufficient funds in the Secondhand Dealer and Pawnbroker Fund created pursuant to Section 21642.5, the department shall promptly develop a single, statewide, uniform electronic reporting system to be used to transmit these secondhand dealer reports.

(2) (A) Until the date that the Department of Justice implements the single, statewide, uniform electronic reporting system described in paragraph (1), each secondhand dealer may continue to report the information required by this section under the reporting categories described in paragraph (1) in paper format on forms approved of or provided by the Department of Justice.

(B) On and after the date that the Department of Justice implements the single, statewide, uniform electronic reporting system described in paragraph (1), each secondhand dealer shall electronically report using that system the information required by this section under the reporting categories described in paragraph (1), except that for the first 30 days following the implementation date, each secondhand dealer shall also report the information in paper format as described in subparagraph (A).

(3) A coin dealer shall report the information required by this section under the reporting categories described in paragraph (1) on a form developed by the Attorney General that the coin dealer shall transmit each day by facsimile transmission or by mail to the chief of police or sheriff. A transaction shall consist of not more than one item.

(4) For purposes of this subdivision, “item” shall mean any single physical article. However, with respect to a commonly accepted grouping of articles that are purchased as a set, including, but not limited to, a pair of earrings or place settings of china, silverware, or other tableware, “item” shall mean that commonly accepted grouping.

(5) Nothing in this subdivision shall be construed as excepting a secondhand dealer from the fingerprinting requirement of subdivision (g).

(k) Nothing in this section shall be construed to exempt a person licensed as a firearms dealer pursuant to Sections 26700 to 26915, inclusive, of the Penal Code from the reporting requirements for the delivery of firearms pursuant to Sections 26700 to 26915, inclusive, of the Penal Code.

SEC. 4. Section 21641 of the Business and Professions Code is amended to read:

21641. (a) The chief of police, the sheriff, or, where appropriate, the police commission, shall accept an application for and grant a license permitting the licensee to engage in the business of secondhand dealer, as defined in Section 21626, to an applicant who has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. Prior to the granting of a license, the licensing authority shall submit the application to the Department of Justice. If the Department of Justice does not comment on the application within 30 days thereafter, the licensing authority may grant the applicant a license. All forms for

application and licensure, and license renewal, shall be prescribed and provided by the Department of Justice. A fee shall be charged to the applicant by the Department of Justice as specified in Section 21642.5. The licensing authority shall collect the fee and transmit the fee to the Department of Justice. In addition, the police chief, the sheriff, or, where appropriate, the police commission, may charge a fee to the applicant not to exceed the actual costs incurred to process the application and to collect and transmit the fee charged by the Department of Justice.

(b) For the purposes of this section, “convicted” means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(c) Notwithstanding subdivisions (a) and (b), no person shall be denied a secondhand dealer’s license solely on the grounds that he or she violated any provision contained in this article or Article 5 (commencing with Section 21650), or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

(d) Any person licensed as a firearms dealer pursuant to Sections 26700 to 26915, inclusive, of the Penal Code, who is conducting business at gun shows or events pursuant to subdivision (b) of Section 26805 of the Penal Code, and who has a valid secondhand dealer license granted by the appropriate local authorities in the jurisdiction where the firearms dealer license has been granted, shall be authorized to conduct business as a secondhand dealer at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, without regard to the jurisdiction within this state that issued the secondhand dealer license pursuant to subdivision (a) of this section. No additional fees or separate secondhand dealer license shall be required by any agency having jurisdiction over the locality where the gun show or event is conducted. However, the person shall otherwise be subject to, and comply with, the requirements of this article when he or she acts as a secondhand dealer at the gun show or event to the same extent as if he or she were licensed as a secondhand dealer in the jurisdiction in which the gun show or event is being conducted.

SEC. 5. Section 21642 of the Business and Professions Code is amended to read:

21642. (a) A license granted pursuant to Section 21641 shall be renewable the second year from the date of issue, and every other year thereafter, upon the filing of a renewal application and the payment of a license renewal fee specified by the licensing authority, as described in this subdivision. The Department of Justice shall also charge a fee, as specified in Section 21642.5. The licensing authority shall collect the fee and transmit the fee and a copy of the renewed license to the Department of Justice. The police chief, sheriff, or, where appropriate, the police commission may charge a fee not to exceed the actual costs incurred to process the renewal application of the licensee and to collect and transmit the fee charged by the Department of Justice.

(b) The license shall be subject to forfeiture by the licensing authority and the licensee's activities as a secondhand dealer shall be subject to being enjoined pursuant to Section 21646 for breach of any of the following conditions:

(1) The business shall be carried on only at the location designated on the license. The license shall designate all locations where property belonging to the business is stored. Property of the business may be stored at locations not designated on the license only with the written consent of the local licensing authority.

(2) The license or a copy thereof, certified by the licensing authority, shall be displayed on the premises in plain view of the public.

(3) The licensee shall not engage in any act which the licensee knows to be in violation of this article.

(4) The licensee shall not be convicted of an attempt to receive stolen property or any other offense involving stolen property. For the purposes of this paragraph, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the chief of police, the sheriff, or, where appropriate, the police commission is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) Notwithstanding subdivisions (a) and (b), no person shall have his or her renewal application for a secondhand dealer's license denied, nor shall his or her secondhand dealer's license be

forfeited solely on the grounds that he or she violated any provision contained in this article or Article 5 (commencing with Section 21650), or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

SEC. 6. Section 21642.5 is added to the Business and Professions Code, to read:

21642.5. (a) The Department of Justice shall require each applicant for an initial license under Section 21641 of this code or Section 21300 of the Financial Code and each applicant for renewal of a license under Section 21642 of this code or Section 21301 of the Financial Code to pay a fee not to exceed three hundred dollars (\$300), but in no event exceeding the costs described in subdivision (b), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

(b) The fees assessed pursuant to subdivision (a) shall be no more than necessary to cover the reasonable regulatory costs to the department of doing all of the following:

(1) Processing initial license applications under Section 21641 of this code and Section 21300 of the Financial Code.

(2) Processing renewal applications under Section 21642 of this code and Section 21301 of the Financial Code.

(3) Implementing, operating, and maintaining the single, statewide, uniform electronic reporting system described in subdivision (j) of Section 21628.

(c) All licensees holding a license issued before the effective date of the act adding this section pursuant to Section 21641 or 21642 of this code or Section 21300 or 21301 of the Financial Code shall, within 120 days after enactment of the act adding this section in the 2011–12 Regular Session, in addition to any fee required under subdivision (a), pay a fee not to exceed two hundred eighty-eight dollars (\$288) to the Department of Justice.

(d) The fees paid pursuant to subdivisions (a) and (c) shall be deposited in the Secondhand Dealer and Pawnbroker Fund, which is hereby established in the State Treasury. The revenue in the fund shall, upon appropriation by the Legislature, be used by the Department of Justice for the purpose of paying for the costs described in paragraphs (1) to (3), inclusive, of subdivision (b), except that the revenue received pursuant to subdivision (c) shall,

upon appropriation by the Legislature, be used by the Department of Justice for the purpose of paying for the costs described in paragraph (3) of subdivision (b).

(e) Applicants described in subdivision (a) shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purposes of obtaining information as to the existence and contents of a record of state convictions and state arrests and information as to the existence and contents of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(1) The Department of Justice shall prepare a state-level response pursuant to paragraph (1) of subdivision (l) of Section 11105 of the Penal Code.

(2) The Department of Justice shall provide subsequent notification service pursuant to Section 11105.2 of the Penal Code for applicants described in this subdivision.

(3) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this subdivision. The fee revenues shall be deposited in the Fingerprint Fee Account and shall, upon appropriation by the Legislature, be used by the department for the purposes of paying the costs associated with this subdivision.

SEC. 7. Section 21208 of the Financial Code is repealed.

SEC. 8. Section 21208 is added to the Financial Code, to read:

21208. A pawnbroker shall comply with the reporting requirements imposed on secondhand dealers under Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

SEC. 9. Section 21300 of the Financial Code is amended to read:

21300. (a) The chief of police, the sheriff, or, where appropriate, the police commission shall accept an application for and grant a license permitting the licensee to engage in the business of pawnbroker, as defined in Section 21000, at the address indicated on the application, to an applicant who has complied with the requirements of Sections 21303, 21304, and 21305 and has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. Prior to the granting of a license, the licensing authority shall submit the application to

the Department of Justice. If the Department of Justice does not comment on the application within 30 days thereafter, the licensing authority shall grant the applicant a license. All forms for application and licensure, and license renewal, shall be prescribed and provided by the Department of Justice. A fee shall be charged to the applicant by the Department of Justice, as specified in Section 21642.5 of the Business and Professions Code, for processing the initial license application and funding the single, statewide, uniform electronic reporting system set forth in subdivision (j) of Section 21628 of the Business and Professions Code. The licensing authority shall collect the fee and transmit the fee to the Department of Justice. In addition, the police chief, sheriff, or, where appropriate, the police commission, may charge a fee to the applicant not to exceed the actual costs incurred to process the application and to collect and transmit the fee charged by the Department of Justice.

(b) For the purposes of this section, “convicted” means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(c) Notwithstanding subdivisions (a) and (b), no person shall be denied a pawnbroker’s license solely on the grounds that he or she violated any provision contained in Chapter 1 (commencing with Section 21000) or Chapter 2 (commencing with Section 21200), or any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8 of the Business and Professions Code, unless the violation demonstrates a pattern of conduct.

SEC. 10. Section 21301 of the Financial Code is amended to read:

21301. (a) A license granted pursuant to Section 21300 shall be renewable the second year from the date of issue, and every other year thereafter, upon the filing of a renewal application, payment of a renewal fee specified by the licensing authority as described in this subdivision, and compliance with the requirements of Section 21303. The Department of Justice shall also require the licensee, in addition to any locally assessed fee as set forth herein, to pay a fee as described in Section 21642.5 of the Business and Professions Code. The licensing authority shall collect the fee and transmit the fee and a copy of the renewed license to the Department of Justice. The police chief, sheriff, or, where

appropriate, the police commission may charge a fee not to exceed the actual costs incurred to process the renewal application of the licensee and to collect and transmit the fee charged by the Department of Justice.

(b) The license shall be subject to forfeiture by the licensing authority, and the licensee's activities as a pawnbroker shall be subject to being enjoined pursuant to Section 21302, for breach of any of the following conditions:

(1) The business shall be carried on only at the location designated on the license. The license shall designate all locations where property belonging to the business is stored. Property of the business may be stored at locations not designated on the license only with the written consent of the local licensing authority.

(2) The license or a copy thereof, certified by the licensing authority, shall be displayed on the premises in plain view of the public.

(3) The licensee shall not engage in any act that the licensee knows to be in violation of this article.

(4) The licensee shall not be convicted of an attempt to receive stolen property or other offense involving stolen property. For the purposes of this paragraph, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the chief of police, the sheriff, or, where appropriate, the police commission is permitted to take following that conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(c) Notwithstanding subdivisions (a) and (b), no renewal application for a pawnbroker's license may be denied, nor may his or her pawnbroker's license be forfeited, solely on the grounds that the applicant violated any provision contained in Chapter 1 (commencing with Section 21000) or Chapter 2 (commencing with Section 21200), or any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8 of the Business and Professions Code, unless the violation demonstrates a pattern of conduct.

SEC. 11. The Legislature finds and declares that secondhand dealers and pawnbrokers will receive a clear benefit from the electronic reporting system. Pawnbrokers and secondhand dealers are currently required to report on paper forms approved or provided by the Department of Justice and to maintain specified records for five years. The current requirements cost pawnbrokers and secondhand dealers between fourteen thousand dollars (\$14,000) and one hundred thousand dollars (\$100,000) a month. The electronic reporting system will eliminate the costly and risk-prone paper form reporting system required of these businesses under existing law and replace it with a more cost-effective electronic reporting system.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the single, statewide, uniform electronic reporting system available to secondhand dealers and pawnbrokers as soon as possible, it is necessary that this act take effect immediately.

Approved _____, 2012

Governor